IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRP.No. 1469 of 2001(D)

SM.1031/1976 of TALUK LAND BOARD, PALAKKAD

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REVISION PETITIONER/APPELLANT:

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI THOMAS JOHN AMBOOKEN

RESPONDENTS/RESPONDENTS:

1. SMT.K.AMMUKUTTY, W/O.LATE K.M.VELAYUDHAN EZHUTHASSAN, VADAKKETHARA, PUDUSSERY WEST.

2. SRI V.CHANDRAN, S/O.K.M.VELAYUDHAN EZHUTHASSAN, -DO- -DO-

3. SATHYABHAMA, W/O.CHINNAPPAN EZHUTHASSAN, VADAKKETHARA, PALAKKAD.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN J.

C.R.P.No.1469 OF 2001

Dated this the 13th day of July, 2007

O R D E R

State is the revision petitioner. The challenge in this revision is against the proceedings of the Taluk Land Board in S.M.No.1031/76 dated 1/4/1977. As per the impugned order, 2.68 1/2 acres of land was ordered to be surrendered as excess land held or possessed by Velayudhan Ezhuthassan, son of Murugan Ezhuthassan, after accepting the contention that Sathyabhama, had half right over the properties in plaint A schedule property in O.S.No.270/89 of the Sub Court, Plakkad, which form part of the total extent of the land included originally in the ceiling case of Velayudhan Ezhuthassan. The contention of the State is that the exclusion of 1 1/2 of the property over plaint A schedule in O.S.No.270/89 by the Taluk Land Board from the ceiling case of Velayudhan is wrong and illegal.

2. The Taluk Land Board has initially directed to surrender of 6.01 acres of land as the land in excess of the ceiling limit held by Velayudhan Ezhuthassan. That order was challenged before this Court in C.R.P.No.4808/76, which was allowed on the short ground that the initiation of the suo motu proceedings was without obtaining sanction from

the State Land Board. Thereafter, after obtaining necessary sanction from the State Land Board, proceedings were initiated. Sathyabhama got impleaded in the ceiling case and set up a contention that she had got half right of the entire property and disputed the genuineness of the partition deed as well as the Will said to have been executed by Murugan Ezhuthassan, father of Velayudhan Ezhuthassan. He had entered into a partition with Velayudhan Ezhuthassan prior to 1962 as per which a portion of the property was set apart to the share of Velayudhan. As regards the share in the property, later he executed a Will bequeathing the right over the said property in favour of Velayudhan. If both the partition and Will are valid, Sathyabhama will not be entitled to get any share in the property and the entire property will be held by Velayudhan Ezhuthassan. Since the contention of Sathyabhama was rejected by the Taluk Land Board, she filed C.R.P.No.2757/81 and this Court by order dated 29/11/1985 allowed the C.R.P. holding that the Taluk Land Board does not appear to have followed the legal significance of nature and operation of a Will. The matter was remitted to the Taluk Land Board. While the matter was pending consideration pursuant to the remand order passed by this Court, Sathyabhama instituted a suit for partition as O.S.No.270/89 before the Sub Court, Palakkad, as the legal heir of Lakshmi, who is the sister of Velayudhan. She impugns both the partition deed as well as the Will. That property, which was allotted to the share of Velayudhan, was

included in the B schedule and the property bequeathed by the Will was included in the A schedule. Both sides had adduced evidence before the court below and in the judgment dated 28/6/89 of the Sub Court, Palakkad, it was found that the partition deed executed by Valayudhan is valid and as such Sathyabhama could not claim any right over the plaint B schedule property, which was allotted to the share of Velahudhan as per the partition deed executed between Murugan Ezhuthassan and Velayudhan Ezhuthassan. However, as regards the plaint A schedule property is concerned, that was bequeathed by way of Will executed by Murugan Ezhuthassan, it was found that the Will was not proved to be valid and hence the Will bequeathing half share over the properties was held to be invalid. Since the property originally belonged to Murugan Ezhuthassan and he died after the Hindu Succession Act, Sathyabhama had equal right along with Velayudhan Ezuthassan. Hence it was declared that Sathyabhama had half right over plaint A schedule property. This judgment of the Sub Court was accepted as one passed by a competent civil court and excluded the half share over plaint A schedule item from the ceiling case of Velahudhan. As a matter of fact, though the suit was eventually dismissed, since the plaintiff claimed the entire item, the finding regarding the validity of the Will cannot be assailed on any valid ground. The civil court having found that the Will is not valid in law and that Sathyabhama had half right over plaint A schedule property, which

was subsequently settled as per agreement between the parties pursuant to the judgment of the civil court, rightly excluded such extent of the land so allotted from the ceiling case of Velayudhan Ezhuthassan and the balance extent alone was taken in his account and the excess land has been determined and directed to surrender such extent as is found to be in excess of the ceiling limit applicable to the case. Though it is contended by the learned Government Pleader appearing for the petitioner-State that the Taluk Land Board ought not have accepted the finding of the Trial Court, because eventually the suit was dismissed, the finding regarding the rights of Sathyabhama over half share of the property cannot be ignored by the Taluk Land Board.

3. The finding entered into by the civil court regarding the validity of the Will cannot be assailed on any valid ground. The civil court is fully competent to decide the validity or otherwise of the Will in a suit for partition between the parties. I have gone through the judgment of the Sub Court, Palakkad and it has been found by the Sub Court on analysing the evidence in the case that the validity of the Will was not proved, though it was contended by the 3rd defendant that the Will is valid. Such contention was repelled. Thereafter based on the adjudication of the dispute, the Sub Court came to the conclusion that the Will is not valid.

4. In such circumstances, the Taluk Land Board was perfectly justified in accepting the verdict of the civil court and excluding the share

of Sathyabhama from the ceiling case of Velayhudhan. I do not find any illegality in the order passed by the Taluk Land Board. Accordingly, the revision fails and it is dismissed.

P.R.RAMAN,
JUDGE.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1469 OF 2001

O R D E R

13th July, 2007